

The Use Tax Act, 35 ILCS 105/1 et seq., imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. (This is a GIL).

September 3, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 2, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We ask for a ruling relating to the Illinois Sales Tax imposed in intrastate vs. interstate commerce. We understand that a sell/buy agreement made between seller & buyer and both having situs within state borders constitutes a state taxable intrastate transaction. However, where seller/buyer are situated in different state jurisdictions, such sell/buy transactions are conducted interstate commerce and such event is exempt from Illinois Sales tax. Otherwise, such imposed tax, would be in violation of the Commerce Clause of our U.S. Constitution.

The writer is a 75 year resident of Illinois. He received a Catalog in the Mail from COMPANY. We have interest in the purchase of their Pots & Pans ... #440, 12-Piece Set for U.S. \$799, free shipping & handling.

OBJECTION: Payment of Illinois Sales Tax to any out of state Mail-Order Company, that is to say, to charge the IL. Buyer Illinois Sales Tax over their catalog price on a transaction within interstate commerce.  
Copy: Order Form Attached.

- AUTHORITIES:
- a. Interstate Commerce Act. The act of congress of February 4, 1887' (49 U.S.C.A. sec. 1 et seq.)
  - b. Intrastate Definition: 'Commerce within a state, as opposed to commerce between the states' (i.e. interstate). Black's Law Dict., 5<sup>th</sup>.Ed.
  - c. Supreme Court: Quill Corp.v.North Dakota 91-194

CONCLUSION: State of Illinois does not impose any sales tax on interstate commerce business transactions. An

Illinois consumer is exempt from payment of sales tax to direct marketers or catalog companies in interstate commerce as a matter of law.

We thank the Illinois Department of Revenue for a prompt response to our good faith request for ruling, where here, we may want to purchase a few Pots & Pans, state sales tax exempt pursuant to the Interstate Commerce Act and U.S. Supreme Court.

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail. The Use Tax Act, 35 ILCS 105/1 et seq., imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. As such, Illinois retailers are liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers at the time of sale.

In the circumstance where an Illinois resident purchases items from an out-of-State retailer for use in Illinois, the Illinois resident owes Use Tax. The Illinois resident must pay his Use Tax liability to the Department if the seller does not collect the tax from him. Whether the out-of-State retailer is required to be registered with Illinois and collect the tax depends upon whether the out-of-State retailer has nexus with Illinois. In this case, since COMPANY is collecting Illinois tax from its customers, it either has nexus with Illinois or has voluntarily chosen to register as a Use Tax collector with Illinois as a courtesy for its customers. As stated above, even if COMPANY did not collect the Use Tax, its customers making purchases of its products for use in Illinois still incur the Use Tax liability. These customers would have to pay their Use Tax liability directly to the Department.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.